Individual Rights & Responsibilities Section

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TESTIMONY OF THE INDIVIDUAL RIGHTS AND

RESPONSIBILITIES SECTION OF THE STATE BAR OF WISCONSIN

REGARDING ASSEMBLY BILL 31

Before the Assembly Committee on Labor

April 8, 2009

Members of the committee:

Thank you for allowing me to speak today. I am here to testify as the current Chair of the Individual Rights and Responsibilities Section Board; the Section is comprised of State Bar of Wisconsin members who have a particular interest in civil and constitutional rights. I am also here to testify on behalf of the individual plaintiffs I have represented in the area of employment discrimination.

I want to particularly thank those of you who have offered this proposed legislation. The goal of the legislation – to provide compensatory and punitive damages for individuals who have been targeted by their employers for illegal discrimination – is a laudable one. Compensatory damages are especially necessary for individuals who have been targeted for harassment on a basis protected under Wisconsin's Fair Employment Act. For example, an individual who is harassed on the basis of his or her sexual orientation by being called a "faggot" or a "dyke" likely feels just as harmed as an African-American person feels who is called the "n" word. However, for gay men or lesbians, there is no way to claim damages for the mental injury or to require an employer to pay for psychiatric or psychological treatment for the harm. Assembly Bill 31 is an attempt to remedy this problem. Thank you.

With that said, there are two problems with the bill as it is currently drafted. First, the bill provides for a system of administrative exhaustion that is long and cumbersome. Second, the language of the bill is, in many places, ambiguous. These two factors defeat the purposes the bill is trying to achieve.

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1. Administrative exhaustion – the road is long and hard.

Looking at the first sentence of the proposed s. 111.397(2), it states:

> A person discriminated against or the department may bring an action in circuit court against an employer, labor organization, employment agency, or licensing agency to recover damages caused by a violation of s. 111.321 after the completion of an administrative proceeding, including judicial review, concerning that violation.

The current system allows an individual to file his or her complaint with the Equal Rights Division, after which there is an investigation. If the investigator determines that there is probable cause to believe that discrimination occurred, then the matter is referred to an Administrative Law Judge to hear the case on the merits and determine whether, in fact, the employer engaged in illegal discrimination. A hearing is held, a decision is made, and that decision may be appealed to the Labor and Industry Review Commission. After the Commission renders its decision, then the matter may be appealed to a circuit court on a petition for review under Chapter 227, after which it may be further appealed to the Court of Appeals and the Wisconsin Supreme Court.

The way the statute is written, it is only after this entire process is complete that a person discriminated against may take his or her case into court. As a practical matter, by the time the case returns to circuit court, it has been years since the initial employment discrimination. Witnesses have disappeared, damages have mounted, and the case has dragged on without payment to the employee to make him or her whole for the harm endured.

2. Ambiguity – what does that language mean, anyway?

I want to make this point: if the language of the bill remains ambiguous, attorneys will fight for years over what the legislation means, rather than dealing with cases on the merits. Attorney who represent *employees* want to litigate over whether an employer illegally discriminated against those employees, not whether a particular procedure was properly followed. However, delay is an employer's best weapon, and it is frequently used to defeat employment discrimination cases.

Looking at the second sentence of the proposed s. 111.397(1), it states:

> If the circuit court finds that a defendant has committed a violation of s. 111.321, the circuit court shall order the defendant to pay to the person

> discriminated against compensatory and punitive damages in an amount that the circuit court finds appropriate …

Does this language mean that the circuit court makes a new determination, *after* the administrative law judge, the Labor and Industry Review Commission, the circuit court *and* the appellate courts, as to whether an employer has engaged in illegal discrimination? In the alternative, does this mean that the circuit court merely rubber-stamps the earlier decisions regarding liability, but makes a new decision as to compensatory and punitive damages? Does this mean that there is a trial to the circuit court on the issues of compensatory and punitive damages alone? Or does this language mean that the case must be re-tried in its entirety? Finally, does this mean that the case can be tried to a jury?

If the language can be argued to have more than one potential meaning, it is ambiguous. It is a waste of judicial resources to have courts determine the meaning of legislation; the government and its citizens are better served if legislative intent is clear in the language of the legislation.

I can tell you that employee advocates want the opportunity to try these cases to a jury. There may be instances, however, where it is in the best interests of our clients to try the cases to an Administrative Law Judge. For example, if the employee claims that he or she has been discriminated against on the basis of his or her criminal record, perhaps such a case would be better brought in an administrative forum rather than in a court in front of a jury which might be unsympathetic to such claims.

I have attached a flow chart which shows what I anticipate would be the best structure for allowing a private cause of action which would allow for compensatory and punitive damages. As you will note, the employee would have two different times when he or she could divert her case into court. In some instances, it may make sense to file in court immediately; in most instances, employees will want the opportunity for completion of the Equal Rights Division's investigation process before filing in court.

3. More ambiguity – when do I file?

The proposed language reads:

An action under sub. (1) shall be commenced within the later of following periods, or be barred:

(a) Within 60 days after the completion of an administrative proceeding, including judicial review, concerning the violation.
(b) Within 2 years after the violation occurred, or the department or person discriminated against should have reasonably known that the violation occurred.

I think subsection (a) means after the judicial review *and the period for appeal has run*, but I am not sure. Does it mean 60 days after the opinion on judicial review is filed? What about situations where an appeal to the court of appeals is filed 90 days after the decision at the circuit court? Does that stay the claim for compensatory and punitive damages in circuit court?

As for subsection (b), does this mean that if the case is still pending after two and one-half years, then the only option for filing for judicial review is under subsection (a)?

I can think of no reason that the legislature would want to include ambiguous language in legislation, as it simply clogs the court system with cases which do not go to the merits. It would be nice, perhaps, if a judge could come to the Capitol and just ask "what *did* you mean by this?" The problem is, the judge might get several different ideas; after all, if the judge is unsure, so probably were the drafters. Be direct – say what you mean. We will all be better off.

4. There are other ways to achieve the same ends.

The IRR Board proposes as an alternative to the proposed language Wisconsin's Public Accommodations law, Wisconsin's Open Housing law and Wisconsin's Wage Claim law. They all differ slightly, but they all allow an individual to bring her case to court. I have attached a memo suggesting language modeled upon Wisconsin Public Accommodations law. We know these statutes work. There is no need to reinvent the wheel when it comes to the Fair Employment Act.

CONCLUSION

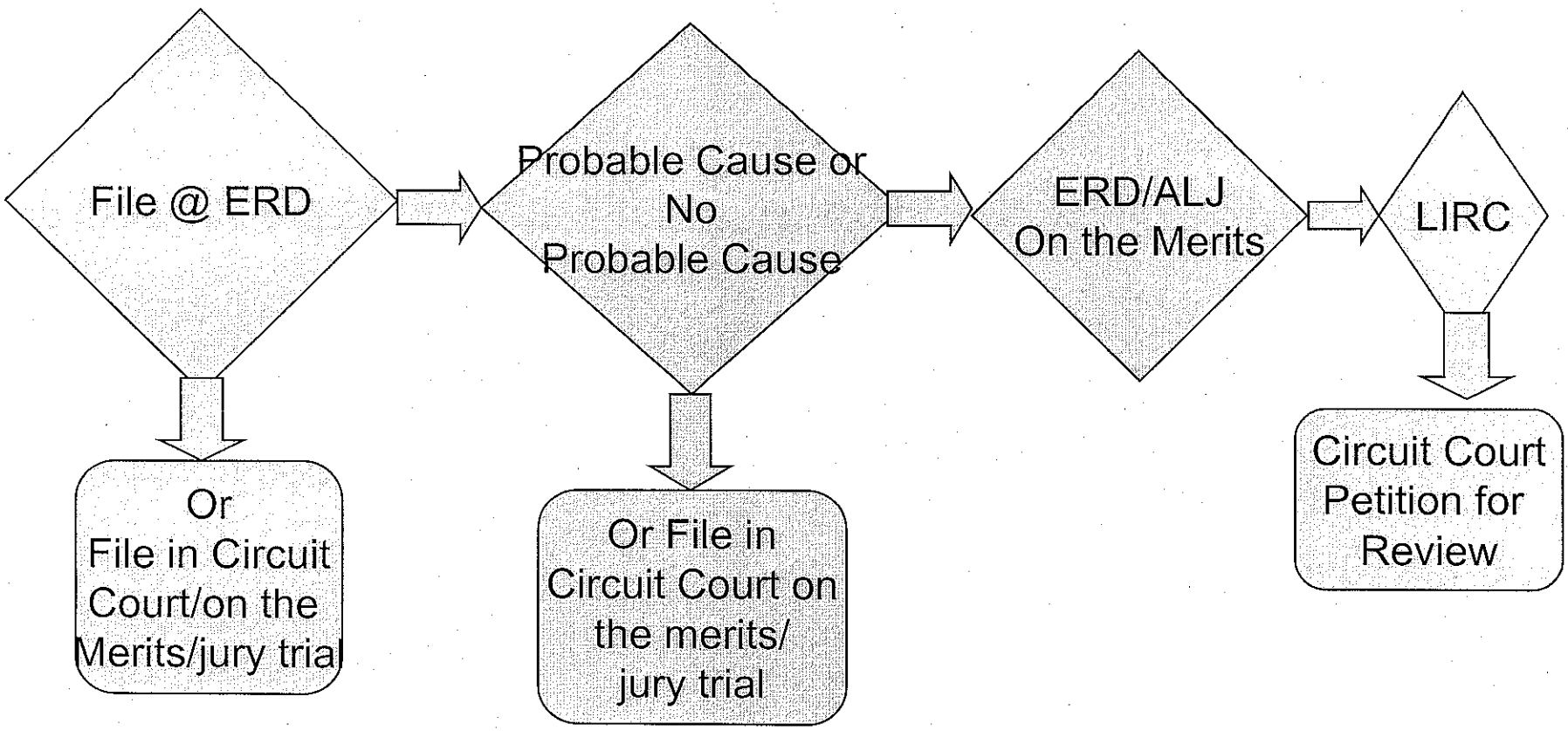
I thank you again for the opportunity to speak today. I would like to underscore the points I made at the outset. The IRR Section Board supports the goals of this legislation, but the language as it is currently drafted contains an unnecessarily long and arduous administrative exhaustion provision, and the language of the entire bill is ambiguous. The result of the bill as drafted will be to give clients relief that they have not had before, but only after an inordinate investment in time and resources. I urge you to keep in mind the goals of this legislation, but find a different way to craft the language so that the citizens of Wisconsin are better served by your efforts.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

If you have questions about this memorandum, please contact Adam Korbitz, Government Relations Coordinator, at akorbitz@wisbar.org or (608) 250-6140.

Suggested Private Right of Action



Individual Rights & Responsibilities Section

State Bar of Wisconsin

Wisconsin Lawyers. Expert Advisers. Serving You.

April 8, 2009

TO: Members, Assembly Committee on Labor

FROM: Brenda Lewison, Chair
Individual Rights and Responsibilities Section
State Bar of Wisconsin

RE: Suggested alternative language for AB 31/SB 20

The Individual Rights and Responsibilities Section suggests that the following language -- modeled upon that already found in Wisconsin law prohibiting discrimination in public accommodation -- be substituted for that in AB 31/SB 20, and that it be inserted in Subchapter II of Chapter 111 of the Wisconsin Statutes (the Wisconsin Fair Employment Act):

1. A person, including the state, alleging a violation of 111.325 may bring a civil action for appropriate injunctive relief, for damages, including compensatory and punitive damages, and, in the case of a prevailing plaintiff, for court costs including but not limited to reasonable expert witness fees and reasonable attorney fees. The civil action may be tried to a jury. The attorney general shall represent the department in an action to which the department is a party.

2. An action commenced under this paragraph may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has a principal place of business, and shall be commenced within the time provided by 893.53.

3. The remedies provided for in this paragraph shall include and be in addition to any other remedies contained in this subchapter.

The language suggested above is very similar to that already found in sec. 106.52(4)(e), the Wisconsin statute that allows for a private right of action for discrimination in public accommodations. The statutory scheme found in 106.52 has worked very well for many years and there is no need to reinvent the wheel when it comes to private actions for violations of the Wisconsin Fair Employment Act. Most importantly, like the public accommodations statute, this language does not require exhaustion of administrative remedies prior to initiating a civil lawsuit. The language is also not ambiguous. This language will better enable victims of discrimination to obtain the relief in circuit court the authors want to make possible through AB 31 and SB 20.

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In regard to the statute of limitations for initiating a civil action, section 893.53 is the statute of limitations that applies to actions pertaining to injuries to the "character or rights of another." It is the one adopted by the federal courts and the Wisconsin Supreme Court for actions alleging discrimination under federal civil rights statutes, as well, as tortious interference with employment, wage-claim actions, malicious prosecution and abuse of process and attorney malpractice. In this way, the compatibility with all of the federal civil rights claims (like Sec. 1983 and Title II of the ADA) that are governed by this section is preserved.

Please do not hesitate to contact me at (414) 273-1040 if you have any questions.

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The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone. If you have questions about this memorandum, please contact Adam Korbitz, Government Relations Coordinator, at akorbitz@wisbar.org or (608) 250-6140.

NFIB
The Voice of Small Business®

Wisconsin

Statement Before the Assembly Committee on Labor

By

Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin Chapter

Wednesday, April 8, 2009
Assembly Bill 31

Madam Chair, members of the Committee, I appreciate this opportunity to make a brief statement on behalf of NFIB's 12,000 members located across the state of Wisconsin.

Last month, NFIB's Research Foundation released the results of the NFIB's monthly small business economic report. The optimism index of our small business owners had fallen once again for the third consecutive month – to a new level, the second lowest level in the 35 year history of the survey study.

However, there was some encouraging news – 10% of the small business owners said they were planning to reduce employment (down from 14% in January); 13% said they were planning to create new jobs (up from 9% in January). But, make no mistake, these are still the lowest readings aside from the deep recessions in the early 1980's and 1970's.

I mentioned this data because it is important that members of this committee understand the economic struggles on Main Street, and I would ask members of the committee to consider whether Assembly Bill 31 would help promote job creation and job growth, or would Assembly Bill 31 contribute further to the current economic hardship being experienced by our small business owners and their workers.

As a result of expanding the incentive to file lawsuits against employers, Assembly Bill 31 would clearly also expand job growth, but only for the lawyers – not the small business community.

Even under current law, nearly 50% of the respondents to a small business liability study fear they will become defendants in a lawsuit, according to the NFIB Research Foundation.

This fear of becoming involved in a lawsuit causes over 20 percent of the small business owners in the NFIB's Liability Study to report they spend more time on liability problems and potential liability problems than such vital business activities as: introducing new technologies or processes, evaluating changes in employee wages and benefits, obtaining or repaying business loans, evaluating the competition, or looking for ways to cut costs. These are the activities small employers should be engaged in – rather than spending both time and money needlessly and unproductively on liability insurance and legal fees.

The median time between the engagement of a lawyer to handle a dispute, and it's resolution is 4-5 months, and median legal expenses for those who incurred them were between $4,000 and $5,000, 10 percent had legal expenses of $25,000 or more (NFIB Research Foundation Study, Use of Lawyers).

This legislation would essentially allow unlimited punitive and compensatory damages, unlimited back-pay, a 10 percent penalty surcharge for the Department of Workforce Development, and unlike federal employment discrimination law, which includes a small business exemption and tiering of penalties, Assembly Bill 31 would apply to all employers large and small.

I urge members of the committee to reject Assembly Bill 31, not because any of us approve of discrimination of any kind in the workplace, but Assembly Bill 31 should be rejected because the penalties for employment discrimination under current law are effective, and the unreasonably harsh penalties created by Assembly Bill 31 will put in place lawsuit incentives and create a complicated and costly process that will have a severe and negative impact on small business, and in turn placing thousands of small businesses at risk of financial ruin, and the jobs they provide in jeopardy.

Thank you, Madam Chair for your consideration, and I urge rejection of Assembly Bill 31.

WMC
WISCONSIN'S BUSINESS VOICE

TO: Members of the Assembly Committee on Labor

FROM: John Metcalf, Director, Human Resources Policy

DATE: April 8, 2009

RE: Assembly Bill 31 – Cause of Action in Court and Compensatory and Punitive Damages for WFEA Cases

Background
Under the current fair employment law, a person alleging discrimination in employment or unfair honesty or genetic testing may file a complaint with the Department of Workforce Development (DWD) seeking action that will effectuate the purpose of the fair employment law, including reinstating the employee, providing back pay, and paying costs and attorney fees. The fair employment law, however, does not authorize DWD to award compensatory or punitive damages to a complainant or to impose any surcharges on the respondent.

Provisions of AB 31
This substitute amendment permits DWD or a person who has been discriminated against or subjected to unfair honesty or genetic testing to bring an action in circuit court to recover compensatory and punitive damages caused by the act of discrimination or unfair honesty or genetic testing, plus reasonable costs and attorney fees incurred in the action, after the completion of all administrative proceedings before DWD and the Labor and Industry Review Commission concerning the violation. Those damages are in addition to any back pay or other amounts awarded in the administrative proceeding. The substitute amendment, however, does not permit an action for damages to be brought against the state, any agency of the state, or any local governmental unit or against any employer employing fewer than 15 individuals.

Under the substitute amendment, if the circuit court finds that a defendant has committed an act of discrimination or unfair honesty or genetic testing, the circuit court must order the defendant to pay to the person discriminated against compensatory and punitive damages in an amount that the circuit court or jury finds appropriate, subject to the limitations, as follows:

1. If the defendant employs 100 or fewer employees, $50,000.
2. If the defendant employs more than 100 but fewer than 201 employees, $100,000.
3. If the defendant employs more than 200 but fewer than 501 employees, $200,000.
4. If the defendant employs more than 500 employees, $300,000.

Finally, the substitute amendment requires the circuit court to order the defendant to pay to the circuit court a fee equal to 10 percent of the amount of compensatory and punitive damages ordered. Fifty percent of a fee collected under the substitute amendment must be transmitted to the secretary of administration, deposited into the general fund, and credited to an appropriation account of DWD, which must use those moneys for the administration of the fair employment law. The balance must be retained by the county treasurer and used to pay for the operating costs of the circuit court.

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WMC is a business association dedicated to making Wisconsin the most competitive state in the nation.

WMC Position
By allowing compensatory and punitive damages for violations of the WFEA, judicial process using unclear standards, this legislation would have a strong negative impact on the Wisconsin business climate. Further, these proposed changes would come at a time when the Wisconsin economy and many businesses face unprecedented economic challenges. Finally, the surcharge feature of this legislation creates an incentive for DWD to take employment discrimination claims to circuit court to fund agency operations.

Conclusion
For these reasons, WMC urges the Committee to vote against this legislation.

WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

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President-Bill Smith
National Federation of Independent Business

Vice President-
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Wisconsin Manufacturers & Commerce

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Wisconsin Insurance Alliance

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Wisconsin Hospital Association Inc.

Mark Grapentine
Wisconsin Medical Society

Thomas Howells
Wisconsin Motor Carriers Association

Matthew Hauser
Wisconsin Petroleum Marketers & Convenience Store Association

Edward Lump
Wisconsin Restaurant Association

TO: Members, Assembly Committee on Labor

FROM: Andrew Cook, Hamilton Consulting Group, on behalf of the Wisconsin Civil Justice Council, Inc.

RE: Opposition to Assembly Bill 31

DATE: April 8, 2009

The Wisconsin Civil Justice Council (WCJC) represents Wisconsin business interests on civil justice issues. The WCJC's primary goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work. WCJC opposes Assembly Bill 31 because of the negative effect it would have on Wisconsin's business climate, especially during this economic downturn.

WCJC is particularly concerned that AB 31 fails to require any showing by the employee that the employer acted with malice or recklessness. Under federal law, the employee must prove that the defendant "engaged in a discriminatory practice" with "malice or reckless indifference to the federally protected rights of an aggrieved individual" in order to receive punitive damages.[1]

Similarly, *Black's Law Dictionary* defines "punitive damages" as "[d]amages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit." AB 31 would allow punitive damages without making any such finding. As such, AB 31 provides an employer little to no protection against an aggrieved employee filing a baseless lawsuit with the hope of receiving damages.

Punitive damages are designed to punish and deter the most egregious conduct. Therefore, the bar for the award of punitive damages must be high and address instances where the employee acted with malice or recklessness. AB 31 fails to provide the proper standard for punitive damages. In fact, AB 31 provides no standard—apparently *any* employee can receive punitive damages even if there is no showing of malice or recklessness by the employer.

WCJC is also concerned that AB 31 creates an incentive for plaintiffs to file lawsuits even in some cases where no discrimination has occurred. Unlike AB 31, federal employment discrimination law places limitations on punitive damages, ranging from $50,000 to $300,000, depending on the size of the employer.[2] Although WCJC opposes *any* compensatory or punitive damages under this law, it is extremely concerned about the potential for lawsuit abuse—especially without any caps on damages. In addition, WCJC opposes a 10 percent "surcharge" on top of the unlimited compensatory and punitive damages that would be used by the Department of Workforce Development (DWD) towards administering the fair employment law. This provision creates the unintended consequence of giving DWD the incentive to alter its decisions in order to increase its budget.

In conclusion, the WCJC opposes AB 31 because it imposes compensatory and punitive damages and fails to require that the plaintiff prove that the employer acted with malice or recklessness—the prerequisite for punitive damages.

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[1] 42 U.S.C. § 1981a(b)(1).
[2] 42 U.S.C. § 1981a(b)(3).

Serving the
Lodging Industry
for Over 100 Years

April 8, 2009

To: Assembly Committee on Labor
Representative Sinicki, Chairperson

From: Trisha Pugal, CAE
President, CEO

RE: **Opposition to AB 31 Expansion of Discrimination Damages & Incentives to DWD**

On behalf of approximately 1,000 lodging properties around the state, we would like to share our concerns relating to AB 31, and ask you to oppose this bill.

Under the current system, if an employer is found at fault in employment discrimination they are responsible for penalties imposed by the Department of Workforce Development (DWD), such as paying back wages the DWD declares are warranted. Whether the employer was aware of the claimed discrimination or not, they must pay or take the action required by the DWD.

With AB 31, new additional compensatory and punitive penalties may be imposed by the circuit courts that are very discretionary, plus this includes an incentive to assign the new penalties.

The inclusion of a 10% surcharge (similar to a commission), with the revenue going to the DWD, is an incentive for awarding larger and broader compensatory and punitive damages than is warranted. This would seem inappropriate at best.

Please do not encourage frivolous lawsuits with unwarranted high penalties, and instead oppose AB 31.

CC: Kathi Kilgore

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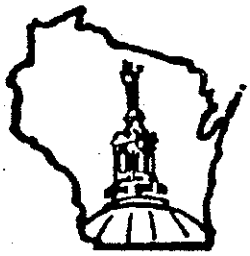
Wisconsin Member
American Hotel & Lodging Association

Wisconsin Retail Associations Working Together

CONFERENCE of RETAIL ASSOCIATIONS



Midwest Equipment Dealers Association

Midwest Hardware Association

National Federation of Independent Business

Outdoor Advertising Association of Wisconsin

Wisconsin Automobile & Truck Dealers Association

Wisconsin Automotive Aftermarket Association

Wisconsin Automotive Parts Association

Wisconsin Grocers Association

Wisconsin Merchants Federation

Wisconsin Petroleum Marketers & Convenience Store Association

Wisconsin Restaurant Association

TO: Assembly Labor Committee

DATE: April 8, 2009

RE: **Assembly Bill 31 – Committee hearing on April 8, 2009**

FROM: Conference of Retail Associations

POSITION: Oppose

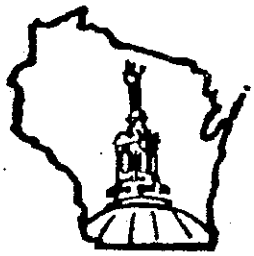
The Conference of Retail Associations ("CORA") has deep concerns about the impact of Assembly Bill 31 on small businesses and the equal rights process in Wisconsin. AB 31 adds unlimited compensatory and punitive damages to the remedies available under the Wisconsin Fair Employment Act ("WFEA"). It provides that litigants who are successful in pursuing discrimination claims before the Equal Rights Division ("ERD") will be entitled to a second trial in circuit court on the issue of compensatory (pain and suffering) and punitive damages.

CORA members believe that the bill will have severe financial impact on small businesses, will inhibit mediation and settlement of claims, and will clog the circuit courts with new cases as well as cases presently brought under federal law in the federal courts. AB 31 will have unintended effects on employees, businesses, and the courts.

Wisconsin Fair Employment Act (WFEA)

The WFEA serves a valuable purpose for both Wisconsin employers and employees. The WFEA provides an administrative process designed to be a simple alternative to protracted litigation, a system that permits litigants an opportunity to have their cases reviewed and determined even if they have no legal representation. The ERD investigates and mediates complaints and employs administrative law judges who hold hearings and, if discrimination is found, can award remedies, which include reinstatement, back pay, and attorneys' fees. These are reasonable and significant remedies designed to compensate employees without bankrupting small business.

Wisconsin Retail Associations Working Together



Midwest Equipment Dealers Association

Midwest Hardware Association

National Federation of Independent Business

Outdoor Advertising Association of Wisconsin

Wisconsin Automobile & Truck Dealers Association

Wisconsin Automotive Aftermarket Association

Wisconsin Automotive Parts Association

Wisconsin Grocers Association

Wisconsin Merchants Federation

Wisconsin Petroleum Marketers & Convenience Store Association

Wisconsin Restaurant Association

CORA CONFERENCE of RETAIL ASSOCIATIONS

Equal Employment Opportunity Commission (EEOC)

Wisconsin employers who employ more than 15 employees are also covered by federal laws including Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act that are administered by the federal EEOC. The EEOC has an administrative process similar to the WFEA and has shared jurisdiction with the state. Under federal law, however, employees are already permitted to sue in federal court for compensatory and punitive damages. **Unlike the proposal in AB 31, however, federal law places a cap on the amount of compensatory and punitive damages an employee may receive, and the cap varies based upon the size of the business in order to protect small businesses from the enormous risk involved. The following limits are imposed under federal law for compensatory and punitive damages:**

$50,000 if under 101 employees

$100,000 if 101 to 200 employees

$200,000 if 201 to 500 employees

$300,000 if over 501 employees

No compensatory or punitive damages are permitted for businesses under 15 employees who are not currently covered by the federal laws.

CONCERNS WITH AB 31

CORA's concerns with AB 31 include:

- AB 31 will complicate procedures under the WFEA by adding a second trial over the issue of damages after the ERD hearing.
- AB 31 will encourage more employers to appeal adverse ERD decisions to avoid damage claims.
- Both employees and employers will face greater costs of protracted litigation as the stakes are raised.
- Employees will have less incentive to mediate and resolve issues early with the prospect of unlimited compensatory and punitive damages.

Wisconsin Retail Associations Working Together

Midwest Equipment Dealers Association

Midwest Hardware Association

National Federation of Independent Business

Outdoor Advertising Association of Wisconsin

Wisconsin Automobile & Truck Dealers Association

Wisconsin Automotive Aftermarket Association

Wisconsin Automotive Parts Association

Wisconsin Grocers Association

Wisconsin Merchants Federation

Wisconsin Petroleum Marketers & Convenience Store Association

Wisconsin Restaurant Association

CRA CONFERENCE of RETAIL ASSOCIATIONS

- Even the smallest of Wisconsin's businesses will be faced with unlimited damage exposure which amounts could bankrupt businesses.
- AB 31 makes compensatory and punitive damages mandatory.
- AB 31 creates a conflict of interest for ERD by providing the state a stake (10 percent surcharge on damages) if discrimination is found.
- By not limiting damages for state claims, lawsuits currently filed in federal court will now be filed in circuit courts.
- The increase of new cases together with the cases now filed in federal court will cause an enormous burden on already underfunded state courts.
- The surcharge provided for in AB 31 increases the cost on defendants and encourages more litigation.

CONCLUSION

While appearing to address laudable goals, AB 31 will have tremendous consequences, some of them unintended. AB 31 will upset the current balance in the WFEA procedures and relationship to federal law. AB 31 will raise the stakes, encourage protracted litigation, and burden employers with exposure to unlimited jury awards.

WISCONSIN
COUNTIES
ASSOCIATION

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Labor

FROM: David Callender, Legislative Associate

DATE: April 8, 2009

SUBJECT: Support for Assembly Substitute Amendment 1 to AB 31

The Wisconsin Counties Association WCA) has had the opportunity to review the proposed language in Assembly Substitute Amendment 1 to Assembly Bill 31 (AB 31).

As you may be aware, WCA previously opposed the Senate companion of this bill, Senate Bill 20, because of its potential to open counties to punitive and compensatory damages in cases of alleged hiring discrimination. We also had procedural concerns about provisions of the bill.

We believe the language contained in the substitute amendment which exempts local governments, including counties, from such actions would address the concerns we previously outlined.

We therefore respectfully request that the Committee adopt the substitute amendment in place of the original AB 31.

Please feel free to contact me if you need additional information.

LYNDA BRADSTREET
DIRECTOR OF ADMINISTRATION & FINANCE

JON HOCHKAMMER
DIRECTOR OF INSURANCE OPERATIONS

JOHN REINEMANN
LEGISLATIVE DIRECTOR

J. MICHAEL BLASKA
DIRECTOR OF PROGRAMS & SERVICES

MARK D. O'CONNELL, EXECUTIVE DIRECTOR

Wisconsin

April 8, 2009

Assembly Labor Committee
Representative Christine Sinicki
Representative Terry Van Akkeran
Representative Andy Jorgensen
Representative Joe Parisi
Representative Barbara Toles
Representative Mark Honadel
Representative Stephen Nass
Representative Daniel Knodl

As in years past, we are asking our State Legislators to pass the Equal Pay Enforcement Act. As members of the Wisconsin Federation of Business & Professional Women we understand the importance of pay equity in the lives of women, families, and businesses of Wisconsin.

Pay discrimination still exists. It exists for women, minorities, and older workers. The national gap for women and minorities is at $.778 to a man's dollar, only a slight improvement over last year. Over the last seven years little change has occurred in the gap. In Wisconsin the gap is $.70 based on a 4-year degree. While we acknowledge that part of the gap is attributed to differences in education, experience and time in the work force that does not account for all of it.

Undervaluing the work women do, limiting the opportunities for advancement and the perks given is related to the existing stereotypes about what kind of work is appropriate for women and the importance of their jobs. When parking lot attendants are paid more than childcare workers, we know that the work women do is undervalued. If women and men have different jobs in a company, women may not be choosing the lower paying jobs. They may have trouble advancing in a company due to bias about women's abilities or levels of commitment.

Pay inequity is across the board. It can be found in all careers and in all income levels. According the US Census, among workers with high school diplomas, women received $24,253 in comparison to the $40,706in the median annual income earned by men. Among workers with a bachelor's degree, women's median annual income level was $39,865 to the men's $53,108.

The wage disparity also grows as women get older. Ultimately, women in the workforce will receive $8000 less annually in retirement income than their male counterparts. It is no surprise that elderly women comprise a large portion of those living in poverty. In a country and state such as ours, that is a disgrace.

We need to start working at the elimination of pay inequity. The Equal Pay Enforcement Act is a step in the right direction to accomplish this. It puts teeth behind the current labor laws in existence and holds employers accountable for their actions. If companies are being fair in their employment actions, they have nothing to fear.

We are not asking for special consideration, just an even playing field. We encourage you to support Bill AB 31, The Equal Pay Enforcement Act as amended and pass it out of committee and to the Assembly floor for a vote.

Thank you for your time and consideration.

Lin Clousing
BPW/WI Legislative Chair

Cc: Senator Dave Hansen